

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ELSEVIER INC., BEDFORD, FREEMAN &
WORTH PUBLISHING GROUP, LLC d/b/a
MACMILLAN LEARNING, CENGAGE
LEARNING, INC., MCGRAW HILL LLC, and
PEARSON EDUCATION, INC.,

Plaintiffs,

v.

DOES 1 - 86 d/b/a 7YEC.COM,
ALIBABADOWNLOAD.COM,
APLUSTBSM.BLOGSPOT.COM,
BOOSTGRADE.INFO,
BUDDIEZ4U.MYSHOPIFY.COM, BUY-
SOLUTIONS-MANUAL.COM,
BUYTESTBANKONLINE.COM,
CANADIANTESTBANKSOLUTIONS.BLOGSPOT
.COM, COLLEGESTUDENTTEXTBOOK.ORG,
CYBERTESTBANK.COM,
DIGITALTESTBANKS.COM, DIGTEXT.COM,
EBOOKAS.COM, EBOOKENTRY.COM,
ETESTBANKS.COM, FINDTESTBANKS.COM,
HOMETESTBANKS.COM, HWPREMIUM.COM,
INSTRUCTORACCESS.COM,
MAXIZZY.MYSHOPIFY.COM,
NURSINGSTUDENTSHelp.COM,
NURSINGTB.COM, NURSINGTESTBANK.INFO,
NURSINGTESTBANK0.INFO,
NURSINGTESTBANKS.CO,
NURSINGTESTBANKTANK.COM,
REALNURSINGTESTBANK.COM,
RHYIBLE.MYSHOPIFY.COM,
SOLUTIONSMANUAL888.WORDPRESS.COM,
SOLUTIONTESTBANK.COM,
SOLUTIONTESTBANK.NET, STUDENT-
SAVER.BLOGSPOT.COM, STUDENTPUSH.COM,
STUDENTS-EXAMS.COM,
SWEETGRADES.COM, TB-BOOK.COM,
TBMIRATE.COM, TEST-BANK-
SOLUTION.BLOGSPOT.COM, TESTBANK.CC,
TESTBANK.CO.COM, TESTBANK.SOLUTIONS,
TESTBANK101.COM, TESTBANK2020.COM,

Civil Action No.

TESTBANKAIR.COM,
TESTBANKANDSOLUTIONS.BLOGSPOT.COM,
TESTBANKAREA.COM, TESTBANKBASE.COM,
TESTBANKBYTE.COM,
TESTBANKCLASSES.COM,
TESTBANKCLICK.COM,
TESTBANKDATA.COM, TESTBANKDB.COM,
TESTBANKDEALS.COM, TESTBANKDOC.COM,
TESTBANKFILES.COM, TESTBANKFIRE.COM,
TESTBANKGRADE.COM,
TESTBANKGROUP.COM,
TESTBANKHOST.COM, TESTBANKHUT.COM,
TESTBANKINC.COM, TESTBANKKING.COM,
TESTBANKLAB.COM, TESTBANKLIB.COM,
TESTBANKMANUALS.COM,
TESTBANKNSOLUTIONS.COM,
TESTBANKPAPER.COM,
TESTBANKPASS.COM,
TESTBANKPLANET.COM,
TESTBANKQUESTIONS.COM,
TESTBANKREAL.COM, TESTBANKS-
SOLUTIONMANUAL.COM, TESTBANKS.NET,
TESTBANKSHOP.NET,
TESTBANKSLIST.WORDPRESS.COM,
TESTBANKSOLUTION01.COM,
TESTBANKSOLUTIONMANUAL.COM,
TESTBANKSTER.COM, TESTBANKTEAM.COM,
TESTBANKTOP.COM, TESTBANKTREE.COM,
TESTBANKWORLD.ORG, TESTBANKY.COM,
TESTMANGO.COM,
TEXTBOOKSOLUTIONS.CC, and
UNIVERSALSTUDYGUIDES.COM,

Defendants.

DECLARATION OF ROGER NAGGAR

I, **ROGER NAGGAR**, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am employed by Bedford, Freeman & Worth Publishing Group, LLC, doing business as Macmillan Learning (“Macmillan Learning”), as the Director of Procure-to-Pay. I have worked for Macmillan Learning for 16 years. Among other responsibilities, I work on

Macmillan Learning's efforts to protect its intellectual property, including the protection of Macmillan Learning's copyrights and trademarks in connection with online piracy matters.

2. I submit this declaration in support of Plaintiffs' *Ex Parte* Application for a Temporary Restraining Order, Order to Show Cause Why a Preliminary Injunction Should Not Issue, Order Authorizing Expedited Discovery, and Order Authorizing Alternate Service (the "Application") in the above-captioned case. I have knowledge of the facts stated herein based on personal knowledge and my review of the documents, files, websites, and other items referenced herein. If called upon to do so, I am able to testify competently to the matters as stated herein.

MACMILLAN LEARNING'S BUSINESS AND VALUABLE WORKS AND MARKS

3. Macmillan Learning is a leading educational publisher in the United States. Macmillan Learning develops, markets, distributes, licenses, and sells a comprehensive range of traditional and digital educational content and tools to professionals, educators, and students. Macmillan Learning's publications include physical and digital textbooks. These textbooks are widely available in the United States marketplace to consumers for a fee. They are sold through direct sales channels and via legitimate distributors and stores, including through online sales, and are among the most popular and widely used titles in their fields.

4. Macmillan Learning also publishes test banks, which are important supplemental materials to textbooks. Test banks are sets of questions, and, in some instances, corresponding answers, to be used by the professor or instructor who assigned the textbook for his or her course. Professors and instructors use these supplemental materials to create lesson plans, homework assignments, exams, and/or for grading purposes. Accordingly, to preserve their pedagogical value, these supplemental materials are not generally distributed to the public.

5. Test banks are specific to a given textbook or series of textbooks. As such, these

supplemental materials are tailored to the pedagogical approach of the works to which they correspond.

6. Test banks contain additional content beyond what is in the textbook. For instance, in the way that creative efforts go into creating or selecting questions, whether for inclusion in the textbook or its corresponding test bank, similar creative efforts go into developing the answers in the test banks. Countless decisions are made concerning answer choices, wording, examples, approach, depth, and other substantive details.

7. Macmillan Learning is the copyright owner of, and/or the owner of exclusive rights under copyright in, among many others, its works or derivative works described on **Exhibit A** to the Complaint (the “Authentic Works”). Macmillan Learning has obtained copyright registrations, duly issued by the United States Copyright Office, covering the Authentic Works.

8. Macmillan Learning is the owner or the exclusive licensee of, among others, its trademark described on **Exhibit B** to the Complaint (the “Mark”). Macmillan Learning or its affiliates have duly registered the Mark on the Principal Register of the United States Patent and Trademark Office. Along with its trademarks, Macmillan Learning publishes its works under a variety of other valuable and recognizable imprints, or brands, described on **Exhibit C** to the Complaint, including, for example, Bedford/St. Martin’s, BFW, BFW High School Publishers, Freeman, Macmillan Learning, W.H. Freeman & Company, and Worth Publishers, among others. Macmillan Learning has invested decades of effort in building a reputation of quality in the publishing industry, which consumers associate with its works, trademarks, imprints, and brands.

DEFENDANTS’ INFRINGING ACTIVITIES

9. Defendants own, control, and/or operate websites that reproduce test banks, and sometimes Macmillan Learning’s textbooks, and sell and distribute those copies of Macmillan

Learning's works to students and other consumers in the United States and elsewhere. Macmillan Learning has not granted any license or otherwise authorized Defendants to copy, distribute, or sell electronic (or other) copies of its works.

10. Likewise, Macmillan Learning has not granted any license or otherwise authorized Defendants to use Macmillan Learning's trademarks in advertising or selling Defendants' goods and services.

11. Through their infringing websites, Defendants sell copies of the Authentic Works identified on Exhibit A to the Complaint, one or more of which contain reproductions of Macmillan Learning's Mark. The Authentic Works included on Exhibit A (and, in turn, the Mark on Exhibit B) are by no means an exhaustive list of Macmillan Learning's works sold by Defendants.

12. At Macmillan Learning's request, Dan Seymour at Oppenheim + Zebrak, LLP ("O+Z"), and a team working under his supervision, obtained copies of the Authentic Works from Defendants' websites, through purchases or free samples. I confirmed that the files obtained by Mr. Seymour and his team are unauthorized copies of the Authentic Works.

13. The purchase of Macmillan Learning's textbook *A Pocket Style Manual* 8th edition also provides an example of an infringing copy of an Authentic Work sold by the relevant Defendant that bears an unauthorized identical or substantially indistinguishable reproduction of the Mark.

14. Macmillan Learning does not currently know the Defendants' true identities and locations because Defendants hide behind their infringing websites and the anonymity of the internet.

HARM TO MACMILLAN LEARNING

15. Macmillan Learning invests significant monies to publish its copyrighted works.

Macmillan Learning makes substantial investments, for example, in content creation and in promotion of its copyrighted works published under its trademarks. Defendants' sale of unauthorized copies of Macmillan Learning's test banks steals the fruits of Macmillan Learning's and its authors' creative efforts and monetary investments and diminishes interest among teaching professionals to use the associated textbooks for their classes. A substantial decline in their income could cause Macmillan Learning to cease publishing one or more deserving books. This would adversely impact the creation of new works, scholarly endeavors, and the education of students in the United States.

16. By providing students with unauthorized access to materials that teaching professionals use for assignments and on exams, Defendants' activity undermines the integrity of the educational process, as well as diminishes the value of Macmillan Learning's test banks and, as a result, the corresponding textbooks. Professors and instructors are often reluctant to adopt a textbook for their course if the test bank for the book is freely and widely available.

17. Defendants' sales corrupt the educational process by facilitating cheating. Students who cheat to obtain better grades instead of studying and asking questions are depriving themselves of valuable learning, taking unfair advantage of students who do not cheat, and depriving their professors or instructors of valuable feedback. Cheating can also lead to unqualified students entering the workforce, thus impacting the general public. This problem is heightened, for example, in the medical field, where qualifications impact health and safety. Moreover, when the utility and value of Macmillan Learning's test banks are diminished, even greater demands are placed on educators, causing them to re-invent the wheel and cutting into valuable time that could be used to otherwise enhance the educational experience. Indeed, where a test bank has become available to students through cheating websites like Defendants', it is not

uncommon for professors or instructors who have adopted the corresponding textbook to express concerns to Macmillan Learning and seek assistance to help minimize the problem. And as Macmillan Learning's supplementary materials comprise a key part of the educational process, when they are copied and distributed without authorization, the result is also harm to Macmillan Learning's reputation in the educational communities it serves and beyond.

18. I am not aware of any counterclaims Defendants could have against Macmillan Learning.

I declare under penalty of perjury that the foregoing is true and correct.



ROGER NAGGAR

Executed on this 8th day of October 2020.